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No. 392

In the Supreme Court of the United States

OCTOBER TERM, 1968

DONALD SWEIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of New York, petitioner was convicted on twelve counts of mail fraud and one count of conspiracy to commit that offense. 18 U.S.C. 1341, 371. On January 5, 1968, he was sentenced to concurrent terms of three years' imprisonment on two counts and to concurrent terms of probation for three years on each of the remaining counts, the probation to commence at the expiration of the prison term. The court of appeals affirmed (Pet. App. 1a–7a).

Petitioner does not challenge the sufficiency of the evidence which clearly established his participation

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in a scheme to defraud mail order vendors by ordering merchandise under assumed names and then failing to pay for the items received. See Pet. App. 2a. The issues raised in the present petition all relate to rulings of the judge at trial which, we submit, do not warrant review by this Court. Each of petitioner's contentions is fully answered by the opinion of the court below, on which we rely.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1968.

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